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Abraham Lincoln's Contemporaries

David Davis

Excerpts from newspapers and other sources

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The man who made Lincoln President

Judge David Davis is hardly a prominent figure in history, but without him, Abraham Lincoln might well have remained in Springfield.

By James E. Myers

The date: May 18, 1860. The place: Chicago. The scene: A hastily constructed convention hall known as the Wigwam, at the corner of what is now Wacker Drive and Lake Street. Pandemonium has broken loose in the crowded hall as hats, canes, and shoes are thrown into the air amid yelling and chanting. Outside, cannons boom and boats on the nearby Chicago River give blasts of their horns.

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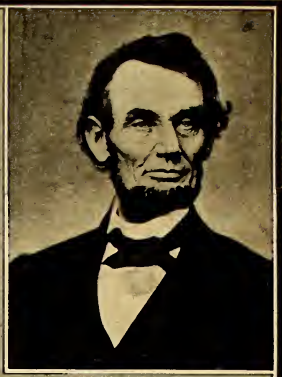

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The reason for the festivity is that a son of Illinois, Abraham Lincoln, has won the Republican Party nomination for President on the third ballot at the national convention, upsetting the heavily favored Eastern candidate, Sen. William H. Seward of New York. And the happiest person in town (Lincoln being in Springfield at the time) is probably the victorious campaign manager, a mountain of a man named David Davis.

Although Davis merits little more than a footnote in history, he was an important figure in the politics and government of the mid-19th Century, which is more than a little surprising, considering his somewhat erratic beginnings.

Davis' youth was melancholy and un-

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James E. Myers, a Springfield resident, writes frequently on Lincoln lore.

Lincoln sometimes filled in for Judge Davis on the bench.

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settled. Eight months after his father's death, he was born to a Welsh family that had come to America in the 17th Century to become planters and preachers in Maryland. A slave nursed David, and his playmates often were slaves in an environment that was to slant his judgment of slavery, abolition, and Reconstruction.

Young David's mother married again and had five more children, with whom David did not seem to belong. Not wanted at home, he spent his boyhood being shunted among relatives and boarding schools until, at age 13 in 1828, he went west to the frontier school of Kenyon College in Ohio.

With such a boyhood—transient, uncertain, rejected— it is no wonder that David Davis forever had a strong need for friendship. Years later, on the 8th Judicial Circuit in Illinois, Davis would find among lawyers and litigants the support and friendship he craved. And Abraham Lincoln would become the surrogate father he had been seeking, although Lincoln was only six years older than he.

After studying law in Massachusetts, Davis went west to St. Louis in search of a practice. His uncle had advised him to avoid St. Louis as too competitive, and to settle in Pekin, Ill. He did, and within 30 days, citizens of Pekin chose him to be part of a committee to go to Vandalia, then the state capital, to secure a charter for a railroad that would reach the Wabash River. He competed with almost every Illinois town, all of them wanting *something*. The 1830s were years of wild speculation, uncertain money, and freewheeling deals.

In Vandalia, Davis met the men who were to be most influential in his life — especially Abraham Lincoln. But he was frustrated in that Southern Illinois community because his law practice was slow, and he made few friends. At first he tried to get a job and move back east. But he eventually stayed in Illinois, moving in 1838 to Bloomington, then a raw, primitive town of 450.

In Bloomington, Davis worked hard, successfully speculated in land, and within three years got permission to marry Sarah Walker, his longtime sweetheart from Massachusetts. After their marriage, Sarah found Bloomington barren of comforts. "You can't get any fancy article here," she wrote, "no ribbon or blond (lace) or flowers, no good shoes." And she found the language outrageous. People said "real jam up" for "uncommon good"; "intend" was replaced by "allow." One kept his eyes "skinned" rather than "open." A man was not "violent." he was "ramtankerous."

Although not a strong trial lawyer, Davis did well in other areas of the law, especially in making collections for St. Louis and Philadelphia firms against frontier merchants who had difficulty making money from a poor and transient population. He recognized the fertility of Illinois prairie when most thought it useless, and he bought big chunks of it. One transaction brought him 761 acres for unpaid taxes of $24.83. By 1845 he owned 2,730 acres, and he never quit speculating in land, the base of his fortune.

He was less successful running for office. Campaigning for the Illinois Senate in 1845, he was opposed by the kind of politician who made frontier elections so interesting. The man was a wagon-maker and a stump speaker, while Davis was shy. When an influential farmer died and there was no undertaker, the wagon-maker made the casket, delivered the eulogy, and buried the farmer, winning friends and the election. Davis could not compete against such virtuosity.

Finally he won a job worthy of his talents — judge of the 8th Judicial Circuit. Life on the circuit offered a revealing view of the frontier everywhere. Roads were paths, few streams had bridges, and a man could ride for a day without seeing a house. "No human being would now endure what we used to on the circuit," William Herndon, Lincoln's last law partner wrote. "I have slept with 20 men in the same room — some on bed ropes, some on quilts, some on sheets — a straw or two under them; and oh — such victuals — Good God! Excuse me from a detail of the meals."

But Judge David Davis loved it. Lawyers met their clients "on the sunny side of a courthouse" or "under the shade of a convenient tree." On court day, litigants swarmed over the ground, country roads were filled with farm families coming to town to talk, listen, meet friends, learn. Court day was like a revival or town meeting, and a prime way for frontier folks to socialize.

Law in that era was mostly common sense. Judgments were swift and implacable, and a rare intimacy and trust existed among lawyers, clients, and judges.

Sometimes when Judge Davis was absent, Abe Lincoln sat as judge in his place. This was illegal, of course, but the two were so close and so trusted by other lawyers, and the need for quick, undelayed justice was so vital, that the use of an "informal" judge was often unavoidable.

The most significant result of those harsh years on the circuit was the sealing of a kind of Damon and Pythias relationship between Davis and Lincoln. They traveled together, roomed together, and became close friends, so that when Lincoln ran for the United States Senate in 1854 and 1858, Davis led both campaigns for him. They lost, but gained unmatched experience to be used when Lincoln tried for the Republican nomination for President.

He was at first reluctant to make the run. "I must in candor say I do not think I am fit for President," he wrote. Later, however, the notion took firmer hold: "The taste is in my mouth a little." "The taste" grew stronger and stronger until finally Judge Davis nudged him into the race, serving as campaign manager.

When the campaign maneuvering began, Norman Judd, a circuit-riding lawyer and friend of Lincoln, went to New York and finagled the national convention to Chicago, convincing all that Illinois would be neutral, had no Presidential contender, and was therefore safe for all factions.

During the convention in the Wigwam, Davis made a war room at the Tremont

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Not long after Lincoln's election, Davis joined the Supreme

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Hotel, moving men and events to his liking. His circuit-riding lawyer friends had got the price of railroad tickets to Chicago lowered and also had printed hundreds of counterfeit admission tickets so that Illinoisans could come cheaply to Chicago and pack the Wigwam.

Bull-voiced men were stationed throughout the hall to begin yelling at the proper times. Others signaled by waving handkerchiefs at strategic moments that alerted Lincoln backers to begin roaring. The world had to be told how popular and wanted Lincoln was, even if it scarcely knew of him. Delegates were impressed by all that noise and all those Lincoln men.

Finally the time of truth came. On the first ballot, Sen. William H. Seward, the man to beat, had 173½ votes, Lincoln 102. Judge Davis sent men to make more deals, promises, accommodations.

Delegates now realized that Seward was not a cinch to win, that Lincoln just might beat him. All that shouting helped. Allegiances wavered, and the judge took advantage of it, wooing delegates so that on the second ballot, Seward had 184½ votes and Lincoln 181, as the favorite sons and other lesser candidates dropped out. The third ballot saw delegates scrambling to get on the Lincoln bandwagon. The man from Illinois had won! A sudden silence fell. Then the celebration began, and the thunder of victory was heard throughout the city.

Stephen A. Douglas was the main challenger at the general election. The fellow Illinoisans were old adversaries, with Douglas having whipped Lincoln each previous time. The judge disliked Douglas, thought him a demogog. "If this election is unsuccessful," he wrote, "I shall consider the idea that the people are capable of self-government is a heresy."

Davis worked tirelessly in the critical states. He dispatched circuit-riding lawyers to their home states, from which they had come to Illinois to sell Lincoln and the Republicans. "I believe in God's providence in this election," Davis said, "but at the same time, we should keep our powder dry." By powder he meant the business of "pipe-laying," creating channels through which to funnel money, promises, patronage, deals.

After Lincoln's election victory, the nation galloped toward dissolution, Civil War, depression, emancipation, the death of 500,000 citizens, and problems so staggering their resolution has not yet come to us.

David Davis returned to Illinois, where all seemed trivial after the ex-

Court.

citement on the national scene. "It looks like small business to go on holding courts on $1,000 a year," he wrote.

Loyalty was a chief quality of the judge, and he exercised it in getting jobs for Lincoln's loyal supporters. He badgered the President relentlessly on behalf of office-seekers, exasperating him with demands. But Davis knew how hard they had worked and would be again required to work in four years — a second term.

Two years into the Civil War, Lincoln made Davis a justice of the United States Supreme Court, the highest accolade possible for a lawyer. The judge hesitated, thinking himself no "great shakes." He would have preferred something less imperial, perhaps the federal bench in Chicago. But Lincoln needed him at the top and knew well the judge's trustworthiness, ability, and utter devotion to the Union. Perhaps he recalled that, as a circuit lawyer had once put it, Davis "knew just enough law to be a great judge, and not enough to spoil him." The circuit-riding lawyers had said that David Davis "took to justice by instinct, like a hound dog takes to scent."

The war not only split the nation, it split the North as well. As its heartbreaking course ground on, the people got impatient to end it and grew restive, turning to rebellion and criminality to outwit authority.

Among draftees, some 112,000 refused to report for service. As many as 100,000 at one time were absent without leave from the army, and there were months when 5,000 men deserted. Four officers and 28 men were killed during a march through rebellious Baltimore. Draft officers were murdered. Newspapers were gagged and editors jailed. The Chicago Times, unrelentingly critical of the war, was suppressed.

To get ahead with the war, it was felt necessary to suppress dissenters. But

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The Wigwam, a frame building erected in Chicago for the Republican convention of 1860, was the site of Abraham Lincoln's nomination for President.

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Turn to the Chicago Tribune

Near the end of his life, Davis served a term in the U.S. Senate.

The Davis Mansion in Bloomington is open to the public and managed by the Illinois State Historical Library.

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who would try them, punish them? Military commissions took over the job, bypassing constitutional courts. The army could *detain* subversive dissidents, but could it try, convict, and punish them? The issue was decided in the pivotal *Ex-Parte Milligan* case.

Aiding the South was a secret, nationwide, paramilitary organization called the Sons of Liberty. It was infiltrated and exposed; its leaders were quickly tried by military commission, not a constitutional court, and they were sentenced to be hanged. Among the defendants was "Major General" Lambdon Milligan, who claimed that he had been unconstitutionally tried and convicted by a military commission. The questions: Was Milligan denied his constitutional rights? Could a military court convict and sentence him to death? Ought he be discharged?

The anguished President had earlier written: "Must I shoot a simple-minded soldier who deserts, while I must not touch a hair of a wily agitator who induces him to desert?"

Lincoln had been assassinated by the time the case was decided. The Supreme Court ruled for Milligan. Davis, in opposition to the late President, said: "The importance of the main question . . . cannot be overstated . . . for it involves the very framework of the government and . . . American liberty."

In the majority opinion, which Davis wrote, he said, "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of protection all classes of men, at all times, and under all circumstances. . . ." Further, "This nation . . . has no right to expect that it will always have wise and humane rulers . . . . Wicked men, ambitious of power, with hatred of liberty, and contempt of law, may fill the place once occupied by Washington and Lincoln."

Judge Davis later wrote to William Herndon in Springfield that "Mr. Lincoln said he was opposed to hanging . . . that he did not live to kill his fellow men. That if the world had no butchers but him, he guessed the world would go bloodless. I am satisfied that Lincoln was thoroughly opposed to these military commissions, especially in the free states where the courts were open and free."

More honors and responsibility came to Davis. Robert Lincoln, the assassinated President's son, begged the judge *to administer his mother's estate, but it* was not easy. The always-hefty Davis weighed almost 300 pounds by this time and was ill with diabetes. He continued to administer the Lincoln family estate until Mrs. Lincoln, then a recluse, died in Springfield in 1882.

Davis himself was twice seriously proposed for the Presidency but never received the nomination. He resigned from the Supreme Court, and in 1877, the Illinois legislature elected him to the U.S. Senate, where he served from 1877 to 1883. During these years, however, his health was failing. Sarah had died, he had married a younger woman, and both were anxious to build a new life back in Bloomington. They moved home, and the judge looked after his farms, law practice, and charities. Much honored, rich, and influential, he died at age 71 in 1886.

What Davis said of Lincoln could in some measure have been his own epitaph: "He was largehearted, wiser than those associated with him, full of sympathy for struggling humanity, without malice, with charity for erring man, loving his whole country with a deep devotion . . . hating all forms of oppression."

Were it not for David Davis, Abraham Lincoln might have remained an honored, prosperous, and successful Illinois lawyer. Were it not for his understanding of, and ruling on, the meaning of the Constitution, the Civil War might have caused permanent damage to our guaranteed individual liberties.

Davis was above all a good citizen. A small measure of the man and his personality can be gained by a visit to his Bloomington home, now owned by the state, managed by the Illinois State Historical Library, and open to the public. ■

Lincoln Lore

January, 1982

Bulletin of the Louis A. Warren Lincoln Library and Museum. Mark E. Neely, Jr., Editor. Mary Jane Hubler, Editorial Assistant. Published each month by the Lincoln National Life Insurance Company, Fort Wayne, Indiana 46801.

Number 1727

THE INSANITY DEFENSE IN LINCOLN'S ILLINOIS

The recent verdict in the case of John W. Hinckley, Jr., has provoked a great outcry against the insanity defense. Indiana's "guilty but mentally ill" verdict, itself the product of the outraged aftermath of two recent successful insanity defenses in the state, has become the focus of national attention. Numerous journalists are discussing the virtues of placing the burden of proof on the defendant who claims insanity as a defense. The feeling is widespread, as Robert Coles said in *The New Yorker*, that "the law . . . has changed from what is once was," and people are worried about it.

There are many new things in the law, but the insanity defense is not one of them. Critics seem to think of it as a newfangled product of a degenerate age. The insanity defense is depicted as a dirty trick played on justice by a post-Freudian

Courtesy of National Collection of Fine Arts, Smithsonian Institution

FIGURE 1. Justice appears primitive in William Brickey's painting of a *Missouri Courtroom*. Yet in such surroundings sharp lawyers occasionally argued the insanity defense for their clients.

society incapable of telling right from wrong. In truth, the insanity defense is much older than Freudian psychology. It is an aged institution in American and English law. It was well established when Abraham Lincoln practiced law. He might have used it for his own clients, and he certainly saw it used in Illinois courtrooms. He never complained about its use, and the Illinois Supreme Court of Lincoln's day upheld the insanity defense and met some of the same arguments that are used against it today.

In June, 1855, a man name Isaac Wyant became embroiled in a street brawl over a land boundary dispute. One Anson Rusk shot Wyant in the arm. After the limb was amputated near the shoulder, Wyant murdered Rusk in the County Clerk's office in Clinton, Illinois, on October 12, 1855. He shot him four times in broad daylight and in the presence of several witnesses. In 1857 the case (The People *v.* Wyant) was tried in Bloomington, Illinois (March 31-April 5), on a change of venue. David Davis was the judge, and Lincoln aided the prosecution.

Wyant pleaded not guilty by reason of insanity. His sanity had been questionable long before the murder, and several doctors, including the Superintendent of the State Hospital for the Insane at Jacksonville, testified for the defense. Wyant was acquitted and became an inmate at Jacksonville for several years thereafter. He was eventually released on condition that he return to his native Indiana to stay.

Joseph E. McDonald met Lincoln and other lawyers when they were discussing the case in Danville. Lincoln "had made a vigorous fight for the prosecution" and was surprised to learn that Wyant was an old friend of McDonald's. McDonald had frequently represented him as his counsel in various scrapes in the past. Lincoln wanted to know all about the defendant, and McDonald filled him in. As the lawyers headed to the courthouse the next day, Lincoln told McDonald that he had been much disturbed by what he had learned about Wyant. He had had trouble sleeping, fearing that "he had been too bitter and unrelenting in his prosecution." "I acted," Lincoln said, "on the theory that he was 'possuming' insanity, and now I fear I have been too severe and that the poor fellow may be insane after all. If he cannot realize the wrong of his crime, then I was wrong in aiding to punish him."

Lincoln had learned his lesson. Within a few months of the Wyant trial, Robert Sloo of Shawneetown, Illinois, killed a man who had written a newspaper article critical of Sloo's father. The father had been running for a minor office and was a friend of Lincoln's. He wrote Lincoln to ask for help in his son's defense. Lincoln could not go, but he recommended the lawyer who had successfully defended Wyant. Sloo, too, was found not guilty by reason of insanity.

There may well have been other instances of Lincoln's involvement with the insanity defense, but the lack of a definitive edition of Lincoln's legal papers makes it impossible to tell. By examining the statements of the state supreme court in the period, however, one can gain an appreciation for the reasonable nature of the use of the insanity defense in Lincoln's Illinois.

On July 18, 1859, Wesley B. Fisher murdered his wife Clarissa, apparently in LaSalle, Illinois. In the ensuing trial, the attempt by defendant's counsel to prove his wife's infidelity was forbidden on objection from the prosecutor. When the defense "offered in evidence Chitty's Medical Jurisprudence, Shelford on Lunacy, Beck's Medical Jurisprudence, Taylor's Medical Jurisprudence, and Wharton's Medical Jurisprudence, for the purpose of throwing light on the indications or symptoms of insanity" in Fisher's case, the court refused to admit them in evidence.

In its instructions to the jury, the court stated:

> The law presumes every man to be sane until the contrary is shown, and when insanity is set up as a defense, by a person accused of crime, the jury should be satisfied, from all of the proofs in the case, that at the time of the commission of the crime his mind was so far affected with insanity as to render him incapable of distinguishing between right and wrong, in respect to the killing, or if he were conscious of the act he was doing, and knew its consequences, he was, in consequence of his insanity, wrought up to a frenzy which rendered him *unable* to control his actions or direct his movements.

There followed other controversial instructions which the Supreme Court was later to single out for special comment:

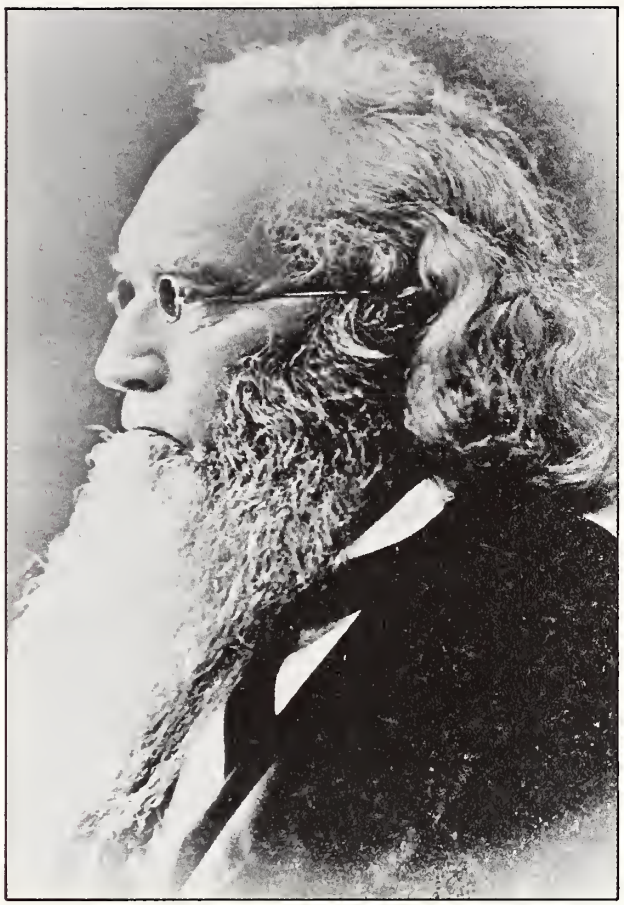
> 5th. In arriving at the conclusion whether the prisoner was sane or insane, at the time of the killing, the jury should begin with the presumption of the prisoner's sanity, and take into account all the evidence in the case of his previous history, habits and conduct, the circumstances immediately connected with the act of killing and his subsequent conduct and deportment, and unless the evidence preponderates in favor of his insanity at the time of the act, the jury cannot excuse the prisoner on the plea of insanity.
>
> 6th. Even if there should be evidence tending to show that the prisoner was insane, or affected with insanity previous to the act of killing, yet the question for the jury on this point is, whether he was insane at the time of the act complained of, and unless the jury are satisfied, from *all* the proof in the case, that the prisoner was insane *at the time of the act of killing*, they should not excuse him on that ground.
>
> 7th. Before the jury can be justified in rendering a verdict of acquittal on the ground of moral insanity, they must be satisfied by *clear* and *undoubted proof* that the accused was acting under an uncontrollable impulse, a frenzy which rendered him unable to control his actions or direct his movements, and not in a spirit of revenge for real or imagined wrong.
>
> 9th. The prosecution are not bound to prove that the defendant was sane at the time of the act complained of, and if the whole evidence in the case should leave it doubtful in the minds of the jury whether the prisoner was sane or insane at the time, they should not in that case excuse the prisoner on the ground of insanity.

These instructions came very close to putting the burden of proof on the defendant.

The Fisher case was a remarkable one not only because of the court's controversial instructions to the jury but also because the defense attempted what might be called an "insanity mitigation" of the crime as well as a traditional insanity defense. Counsel for the defense asked the court to instruct the jury thus:

> Although the prisoner may not have been so insane as to excuse him entirely, yet, in determining whether at the time of the killing he acted without deliberation, and under the influence of such a sudden and irresistible passion as would reduce the grade of the offense from murder to manslaughter, it is proper for the jury, if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind, if so affected by jealousy, when it would not have aroused it if he had not been jealous, to take into consideration the fact, if proven, that he was jealous, in determining the degree and extent of the passion which existed at the time of the killing.
>
> . . . Although the prisoner may not have been so insane as to excuse him entirely, yet in determining whether at the time of the killing he acted without deliberation, and under the influence of such a sudden and irresistible passion as would reduce the grade of the offense from murder to manslaughter, it is proper for the jury, if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind, if so affected by drunkenness, when it would not have aroused it if he had not been affected with drunkenness, to take into consideration the fact, if proven, that he was affected with drunkenness, in determining the degree and extent of the passion which existed at the time of the killing.

The jury was perplexed by the complicated instructions and



From the Louis A. Warren Lincoln Library and Museum

FIGURE 2. Sidney Breese.

asked for clarification from the court. One juror even asked whether it was "lawful for a juryman to go behind our statute law and search the Bible to see whether our statute laws are not void in consequence of their disagreement with the higher law." The jury also wanted to know whether it was "lawful for a juror to go behind the testimony and read medical books to see whether the doctors and others examined on the trial testified correctly or not." The court directed the jury to be governed by Illinois's statutes and by the sworn testimony in the case, not by the Bible and medical books.

Further questions poured from the jury room. Could a juryman "go behind the instructions of the court and search law books for the purpose of finding some error in said instructions"? No, responded the judge, "It is not the law that the jury can go outside of the case, as given to them by the testimony and the instructions of the court, and determine for themselves whether the law, as given to them, is or is not the law." In a final bizarre question, the foreman asked:

> Is it lawful for a juror, after admitting the proof of every essential fact which constitutes a certain crime, to bring in a different verdict, because he, the said juror, does not approve of the penalty attached to the first.
>
> If so, how long must we remain in this worse than purgatory, and be abused and villified by a fanatical *madman*.

The court said no. The judge believed firmly that the jury "must take the instructions, as they receive them from the court, to be the law by which they are to be governed in the case."

After several days of deliberation, the foreman of the jury told the judge that there was little likelihood the jury would ever reach agreement and asked him to discharge them. The judge refused, saying "that before the next term of this court, the witnesses may be in their graves, and justice may be cheated of its victim." Again, the defense objected, as it had to several of the judge's statements. The jury finally found Fisher guilty, and the defense appealed the verdict.

The Supreme Court entertained the idea of rejecting the verdict because of the "loose and disconnected manner" in which the record of the trial was made up but decided not to because the case involved the life of an individual. In the April term of the Supreme Court, 1860, Justice Sidney Breese delivered the court's opinion.

The Supreme Court found little fault with most of the instructions given to the jury or with the lower court's refusal to instruct the jury as the defense requested.

> The jury [Breese wrote], in all cases where such a defense is interposed, should be distinctly told that every man is presumed to be sane, until the contrary is shown — that is his normal condition. Before such a plea can be allowed to prevail, satisfactory evidence should be offered that the accused, in the language of the criminal code, was "affected with insanity," and at the time he committed the act, was incapable of appreciating its enormity. This rule is founded in long experience, and is essential to the safety of the citizen. Sanity being the normal condition, it must be shown, by sufficient proof, that from some cause, it has ceased to be the condition of the accused.

The Supreme Court thus appeared to endorse the idea that the burden of proof was on the defendant who used the insanity defense.

With one of the lower court's instructions, however, Justice Breese took sharp exception:

> Section 188 of the criminal code, (Scates' Comp. 408,) declares in the most pointed and emphatic language, that "Juries, in all cases, shall be judges of the law and the fact." This power is conferred in the most unqualified terms, and has no limits which we can assign to it. We have said, in the case of *Schneir* v. *The People, ante*, p. 17, that, being judges of the law and the fact, they are not bound by the law, as given to them by the court, but can assume the responsibility of deciding, each juror for himself, what the law is. If they can say, upon their oaths, that they know the law better than the court, they have the power so to do. If they are prepared to say the law is different from what it is declared to be by the court, they have a perfect legal right to say so, and find the verdict according to their own notions of the law. It is a matter between their consciences and their God, with which no power can interfere. There can be no apprehension of oppression to the citizen in so looping this power, for an erroneous decision of the jury against a prisoner can be corrected by the power remaining in the court to award a new trial. The jury were not bound to take the law as "laid down" to them by the court, but had the undoubted right to decide it for themselves, and in refusing so to declare, the court erred.

Justice Breese also thought that the instruction requested by the defense which might have reduced the crime to manslaughter should have been given to the jury.

Thus Illinois's highest tribunal was quite willing to admit a consideration which had a tendency to "psychologize the crime away," as the modern saying goes. On the other hand, it appeared to place the burden of proof in a case involving the insanity defense on the defendant.

The Supreme Court of Illinois clarified their views on the tangled question of the insanity defense in a decision handed down while Lincoln was President. In Hopps *v.* The People, decided in the court's April term in 1863, Justice Breese himself altered what he seemed to have said in the Fisher case, stating flatly and clearly: "When a defendant who is being tried upon a criminal charge, sets up insanity as an excuse for the act, he does not thereby assume the burthen of proof upon that question. Such a defense is only a denial of one of the essential allegations against him." He added, tellingly: "And in sustain-

ing such a defense, it is not necessary that the insanity of the accused be established even by a preponderance of proof; but if, upon the whole evidence, the jury entertain a reasonable doubt of his sanity, they must acquit." Breese frankly acknowledged the error in his previous decision:

> The rule here announced, differs from that laid down in *Fisher's case,* 23 Ill. 293. In that case we said, sanity being the normal condition, it must be shown by sufficient proof, that from some cause, it has ceased to be the condition of the accused. The opinion in that case, was prepared under peculiar circumstances not admitting of much deliberation, and this point was not pressed upon the attention of the court, or argued at length. Further reflection has satisfied us, it was too broadly laid down, and that justice and humanity demand, the jury should be satisfied, beyond a reasonable, well-founded doubt, of the sanity of the accused. The human mind revolts at the idea of executing a person whose guilt is not proved, a well-founded doubt of his sanity being entertained by the jury.

Chief Justice John Dean Caton filed a separate opinion, upholding the same point. "Is it any less revolting," he asked, "to an enlightened humanity to hang an innocent crazy man than one who is sane?" The "all-pervading sentiment of civilized man" demanded the "general rule in all criminal trials, that if, from the whole evidence, the jury entertain a reasonable doubt, it is their duty to acquit; and the reason is, that it is better that many guilty persons should be acquitted, than that one innocent person should be convicted."

Justice Pinkney H. Walker filed a partially dissenting opinion. "The plea of insanity," he argued, "like all other special pleas, confesses the act charged and avoids its consequences, by showing circumstances which establish a defense." It seemed logical that "the proof must devolve upon the party interposing the defense." Reasonable doubt of the defendant's sanity was not enough to cause acquittal. The rule announced in the Fisher case, though "not the uniform rule of the American courts," was the rule of "a large majority" of them, Walker said. It was a rule "well calculated to protect community against the perpetration of crime."

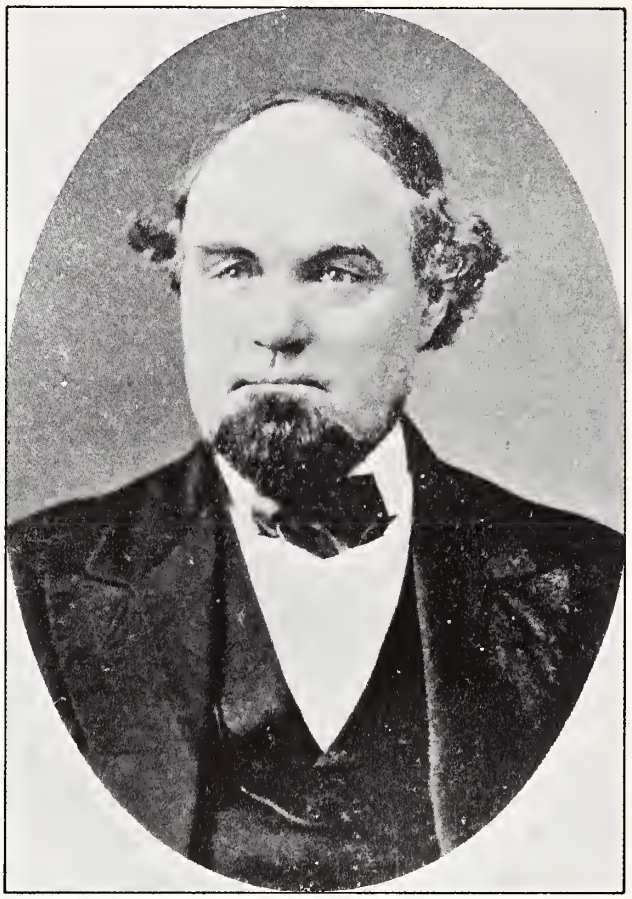
Caton and Breese represented the majority of the court, and the verdict in the Hopps case was reversed (Hopps had murdered his wife and had been found guilty).

Over a hundred years ago, Illinois law upheld the insanity defense. After an awkward start, its highest tribunal ruled that the burden of proof was on the prosecution and that a reasonable doubt of the defendant's sanity dictated an acquittal. "Sanity is guilt," said Justice Breese, "insanity is innocence; therefore, a reasonable doubt of the sanity of the accused, on the long and well-recognized principles of the common law, must acquit." Lincoln's was not a simpler era because it was an earlier era. The judges and lawyers faced the same difficulties that modern judges and lawyers do: conflicting testimony from expert medical witnesses, considerable disagreement among medical authorities who wrote on insanity, awareness that defendants could "possum" insanity, and the all-important necessity to balance the safety of the community against the sanctity of an individual's life and liberty.

Breese admitted that writers on the subject "furnish, as yet, no true and safe guide for courts and juries." Pinkney Walker knew "that there are few questions which present greater difficulties in their solution, than this of insanity. It assumes such a variety of forms, . . . that it has almost been denied, that any person is perfectly sane, on every subject." In a hotly contested case, one Justice noted, "One of the physicians, . . . states that, from complainant's evidence, he thinks it difficult to tell whether Waggoner was sane or insane. . . . The other physician gives it, as his opinion, that he was insane." Caton knew that "insanity may be simulated," but "So may any other fictitious defense be got up to screen the guilty." None of these difficulties challenged the place of the insanity defense as far as Illinois's greatest lawyers in Lincoln's era were concerned.

They were aware, of course, that they dealt with a "science" as yet in its infancy. "To say that men by careful study and investigation," Caton argued, "can acquire no skill on this subject, while the same study and investigation will constantly develop new truths on all other subjects, would be a daring assumption upon which we cannot consent to hang a fellow man." Breese, too, upheld the insanity defense even though he knew that science as yet offered "no true and safe guide for courts and juries." He hoped that someday a rule would be established which, "whilst it shall throw around these poor unfortunates a sufficient shield, shall, at the same time, place no great interest of community in jeopardy."

That day never came — all the more reason that modern Americans should look to the past for guidance when examining the fundamental parts of their legal system.



From the Louis A. Warren Lincoln Library and Museum

FIGURE 3. Pinkney H. Walker.

JAMES ANTHONY MUDD

Dr. Richard Mudd, who watches out for the reputations of his ancestors, noted that the James Mudd referred to in *Lincoln Lore* Number 1721 must have been James Anthony Mudd, Dr. Samuel A. Mudd's older brother. "Jim" Mudd was born in Bryantown, Maryland, in 1829. He lived in or near Bryantown most of his life, moving to Baltimore in the 1880s. During the Civil War, he was a farmer. He was drafted, but his family paid for a substitute.

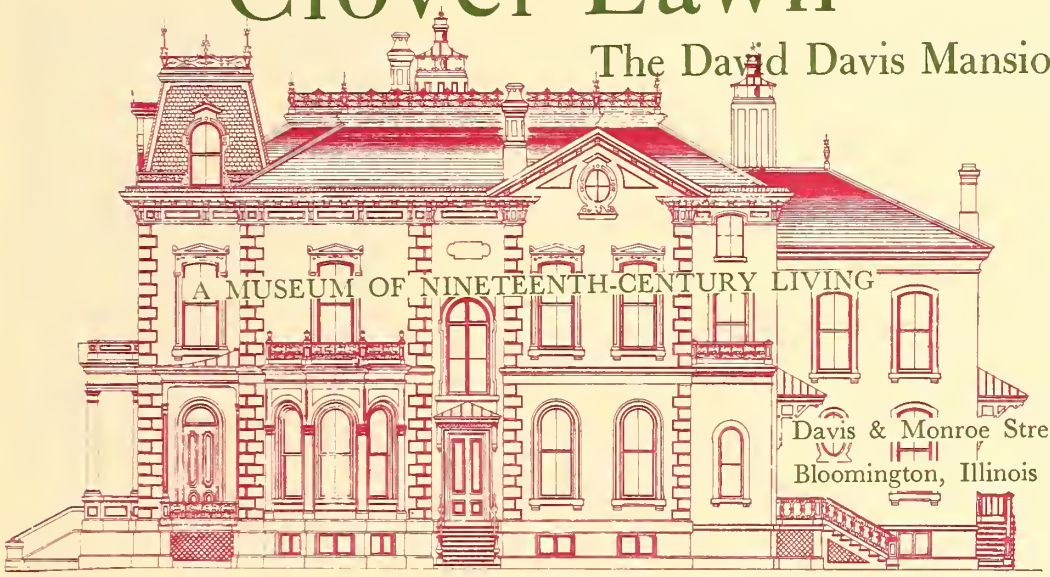
Richard Mudd's useful book, *The Mudd Family of the United States,* does not mention James Mudd's pro-Confederate activities, but the doctor assures us that he learned about them too late to include mention in the first edition of his book. "Jim" Mudd's wife, Emily, testified in Dr. Samuel A. Mudd's behalf at the trial of the alleged conspirators in Abraham Lincoln's assassination.

December 1986

The dining room of the David Davis Mansion in Bloomington is decorated for the holidays. Photo by Jim Fulgenzi

Clover Lawn

The David Davis Mansion



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JUDGE DAVID DAVIS

The magnitude of national problems during the mid-nineteenth century brought forward such Illinois leaders as Lincoln, Douglas, and Grant. Emphasis on these men, however, has tended to obscure the very significant careers of other Illinoisans, among them David Davis.

Born on a Maryland plantation in 1815, David Davis worked his way through Kenyon College, newly founded in the Ohio wilderness. After graduating in 1832, he read law in Lenox, Massachusetts, before attending New Haven Law School. Davis resolved to start his practice in the fast-growing West, and first settled at the Illinois river town of Pekin in 1835. The following year he was offered an established practice in Bloomington, which he accepted. He moved to the town which thereafter was to be his home in the fall of 1836. Two years later, the young attorney married Sarah Walker, daughter of a Lenox judge. Individually and in partnership with a Clinton lawyer, Davis began to build his fortune, principally by speculating in midwestern farmlands. In 1844, Davis was elected to the state legislature as a Whig, and three years later he served in the Illinois Constitutional Convention. Davis was elected Judge of the Eighth Judicial Circuit, then comprised of fourteen central Illinois counties, in 1848. Twice each year he held court over an area roughly the size of his native Maryland. Despite the physical hardships of traveling the circuit, he enjoyed the work and the associations with Abraham Lincoln and the other lawyers. Close ties inevitably developed; Davis was believed the most intimate friend Lincoln ever had.

Judge Davis actively backed all of Lincoln's political aspirations, and in 1860 he systematically organized the Lincoln forces at the Chicago Republican convention. Once the nomination was secured, Davis worked to gain the support of all elements within the party. Lincoln did not forget his friend's contributions, and in 1862 appointed him to the U. S. Supreme Court. There Davis's most noted decision was in the Milligan

Portrait of Judge David Davis
by George P. A. Healy
1876

case (1866), in which the Court severely restricted the right of military courts to try civilians. The assassination of Lincoln was a great personal tragedy to the Judge, who, at the request of the family, served as administrator of Lincoln's estate.

Because of the excesses of the Reconstruction era and the corruption of the Grant administration, Davis disassociated himself from the Republican party, and in 1872 he was nominated for the Presidency by a Labor Reform coalition. Five years later, with the unanimous support of the Democrats in the Illinois legislature, Davis was elected to the U. S. Senate. In 1881, with Republican backing, he became president *pro tempore* of the Senate, and thus served as acting Vice-President following the death of President Garfield. Davis retired to Clover Lawn when his term expired, and died there in 1886.

David Davis, although not as renowned a national figure as some Illinoisans of his era, nevertheless left his imprint on national events. He was instrumental in securing Lincoln's nomination to the Presidency, his Milligan decision was a landmark for civil liberty, and his political role in the Gilded Age makes him one of the most prominent political independents in American history.

THE DAVID DAVIS MANSION

The land on which the Davis Mansion now stands was originally part of a two-hundred acre farm owned by Jesse Fell, the founder of Normal and the lawyer who sold his Bloomington practice to Davis. Fell lost heavily on land investments following the Panic of 1837, and in 1844 turned the farm over to Davis in exchange for his home in town and the settlement of an outstanding loan. Davis soon added another thousand acres to the farm, enlarged the two-story frame house, and named the estate "Clover Lawn." Abraham Lincoln was an overnight guest there before delivering his famous "Lost Speech" at the 1856 state Republican convention in Bloomington.

After he was named to the Supreme Court, Judge Davis considered moving to Washington, but respected his wife's wish to remain in Bloomington and realized that building on this site would enhance the value of his nearby property. He selected one of the Midwest's most prominent architects, Alfred H. Piquenard, to design his new home.

The David Davis Mansion, about 1900

The mansion which Piquenard designed is a variation of the Italian villa style, which admirably fitted the Davises' needs. According to the noted architect A. J. Downing, "The Italian style is one that expresses not wholly the country life, nor the town life, but . . . a mingling of both." The Davis home was one of the most imposing in the Midwest when built. It covers an area 64 by 88 feet, has a three-story tower with a mansard roof, and contains twenty rooms plus a full basement and attic. The home has verandas, bay windows, bracketed eaves, and ornamental cast iron railings, all typical of the Victorian period.

Construction on the Mansion began in May, 1870, when the old Fell house was moved to one

side. Only the finest materials were used. The yellow hard-burned face brick came from the noted kilns of Milwaukee and the foundation sandstone from Ohio. The window frames and quoining are of limestone. The ornamental ironwork was supplied by firms in Philadelphia and St. Louis. Some materials had to be imported. The vestibule floor is English tile, the plate glass is French, and the eight fireplace mantles are of Italian marble.

By the fall of 1870, the rough walls were up, and the roof was completed by the following spring. Work then began on the interior. By the end of 1871, the mantles, doors, gas lighting fixtures, and furnace were installed. Among the last details were putting up the interior shutters and applying the frescoing, as the elaborate stencil painting of the walls and ceilings was then termed. During the summer of 1872, Mrs. Davis selected the furniture, carpets, and draperies at Alexander T. Stuart & Co. and other fine New York stores. By early autumn, the carpets were down and the Davis family settled into the home which had taken more than two years to complete and cost more than $35,000.

The Anteroom and Main Hall

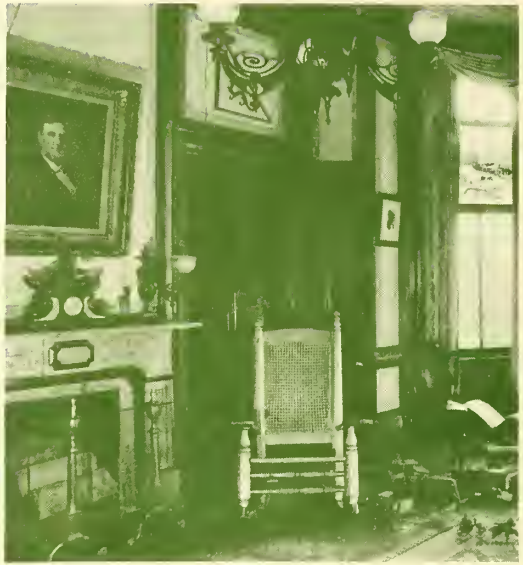
Entrance to the Davis Mansion is through the vestibule, an open octagonal room floored with decorative English tile. From there, the visitor passes into the anteroom through monogrammed glass doors. The parquet flooring, the delicate frescoeing on both the walls and ceilings, and the handsome walnut woodwork all reflect the refined tastes of the period. Another striking feature is the generous proportions of all the rooms, including 13½-foot ceilings throughout the first floor.

To the left of the anteroom is the parlor, which was used for formal entertaining. The two large west windows open onto a veranda. The coal-burning Carrara marble fireplace is especially fine. Most of the Renaissance-style furnishings are the originals purchased in 1872 from Frederick Krutina, a New York furniture maker. The piano, manufactured by Chickering & Sons in 1880, closely resembles the original family piece. The handsomely wrought chandelier was converted from gas to electricity about 1915.

The Parlor

The sitting room to the right of the anteroom was the center of family activities and informal entertaining. The family spent the evenings here reading and writing letters before the wood fire. On cold days even meals were taken here. Of particular interest are the bay window with photographic plates made by John Wesley Powell on one of his expeditions down the Colorado River, Judge Davis's large caned rocking chair, a marble-topped table matching the fireplace, the original narrow strip carpeting, and the two large front windows which give access to the veranda.

The dining room, in back of the parlor, was used for both formal and family dining. There are several notable pieces of furniture in the room, including a Hepplewhite sideboard from Davis's Maryland birthplace, an ornate nineteenth-century sideboard with a marble top matching the fireplace, and a linen chest converted from the Judge's Washington desk.



The Sitting Room

Hepplewhite Sideboard

Judge Davis stipulated that his living quarters be confined to the first floor; the architect therefore located his bed chamber across the hall from the dining room. A family furniture inventory suggests that the Judge also used this room as a study. To the rear is a bathroom complete with an early shower and a separate footbath. Water was supplied by gravity feed from a large tank in the attic which was filled by operating a two-man pump in the basement.

Between the Judge's chamber and the sitting room is the main stair hall, notable for its finely carved risers and balusters. Four additional chambers, two bathrooms, and the library are on the second floor. Decoration here is simpler yet still refined. Plaster mouldings replace wood, and the stenciling in the chambers is confined to the ceilings and borders, yet each bedchamber does contain a marble sink. The two rear chambers were used by the Judge's daughter and niece, while the two front chambers were guest rooms. The library above the vestibule has good natural light with its 15½-foot ceiling and large Palladian window. The Davises were avid readers, and their large library of history, law, and popular fiction is still virtually intact.

Judge Davis's Desk

The rear wing of the Mansion—the service wing—is separated from the main house by a cellar-to-attic stair hall. On the first floor is the kitchen with the original 1871 cast iron range and stone sink. Between the kitchen and the dining room is the china closet which also functioned as a serving pantry with a pass-through into the kitchen. Twin pantries adjoin the kitchen, and a still functioning speaking tube system connects the kitchen with the upstairs hall, the china closet, and the laundry.

The laundry and a cold storage room are in the basement below the kitchen. The laundry range has a large built-in iron kettle used for lard and soap-making as well as for heating water. On the second floor of this wing were two large servants' rooms which now form the custodian's apartment. The Davises regularly employed a cook, an upstairs maid, and a coachman, all of whom lived in these quarters.

Cast Iron Kitchen Range

By the time the Mansion was built, Clover Lawn had become an urban estate bounded by Locust Street, Colton Avenue, Jefferson Street, and the Illinois Central Railroad; and Judge Davis was subdividing adjacent properties into building lots. The grounds reflect the urban environment. A formal oval drive surrounds the Mansion, and the trees which flanked the approach drive still stretch southward to Jefferson Street. To the east of the Mansion is a small but elegant formal garden. To the rear, an elaborate brick woodhouse designed by Piquenard complements the Mansion. The original wooden carriage house, barn, and stable remain, although the garage is a twentieth-century addition. The family traditionally maintained three teams of horses, three or four saddle horses, a pony for the children, two cows, and assorted pigs and chickens.

Clover Lawn was reduced to its present size in 1959 and was donated to the State of Illinois by the Davis heirs the following year. It had been the home of four successive generations of the Davis family, and stands preserved today as an example of the gracious living of a bygone age.

THE ARCHITECT

Alfred H. Piquenard, architect of the Davis Mansion, was born at Bernay in northwestern France and educated at the Ecole Centrale, the most celebrated architecture and engineering school in France. Piquenard was attracted to utopian socialist thinkers and joined the Icarians, a communistic society which came to America in 1849 and settled at Nauvoo, Illinois. Piquenard returned to France briefly in 1852 but was forced to flee because of his radical views. Thereafter he practiced architecture, principally in St. Louis, until his death in 1876. At the time he designed the Davis Mansion, he was also working on the present state capitols of Illinois and Iowa, the Missouri executive mansion, and the McLean County Courthouse in Bloomington.

CLOVER LAWN

The David Davis Mansion is open daily Tuesday through Sunday from 1 to 5 P.M., with guided tours provided. The museum is closed on Mondays and Thanksgiving, Christmas and New Years. Group appointments for morning viewings may be arranged by phoning Bloomington (309) 828-1084 at least twenty-four hours in advance.

The Illinois State Historical Society invites participation in its activities and programs. For information, write Membership Secretary, Illinois State Historical Society, Old State Capitol, Springfield, Illinois 62706.

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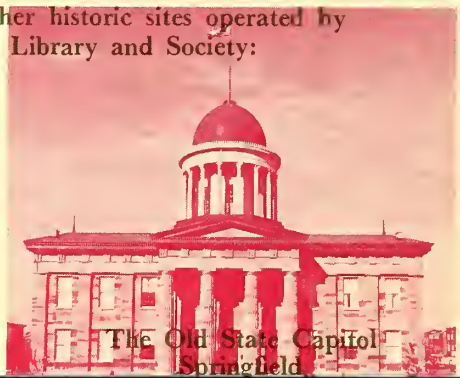

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